

2003 DRAFTING REQUEST**Bill**Received: **03/07/2003**Received By: **dkennedy**Wanted: **As time permits**

Identical to LRB:

For: **Gary Sherman (608) 266-7690**By/Representing: **Judy Kelly (aide)**This file may be shown to any legislator: **NO**Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Health - abortion**

Extra Copies:

Submit via email: **YES**Requester's email: **Rep.Sherman@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Prohibit human cloning but permit stem cell research

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 03/07/2003	kgilfoy 03/07/2003					S&L Crime
/1			pgreensl 03/10/2003		amentkow 03/10/2003	amentkow 03/10/2003	
			pgreensl 03/10/2003		amentkow 03/10/2003	amentkow 03/10/2003	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

At intro.

<END>

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1?	chanaman	11-3/7 King	3 110 P8	3 110 P8/12			

FE Sent For:

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2003 DRAFTING REQUEST

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to
03-2257/*

BillReceived: **01/03/2003**Received By: **dkennedy**Wanted: **As time permits**

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May Contact:

Addl. Drafters:

Subject: **Health - abortion**

Extra Copies:

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Pre Topic:

No specific pre topic given

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/?	dkennedy 02/19/2003 mdsida 03/03/2003	kgilfoy 03/07/2003					S&L Crime
/1			pgreensl 03/07/2003		sbasford 03/07/2003	mbarman 03/07/2003	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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<END>

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May Contact:

Addl. Drafters:

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Extra Copies:

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/?	dkennedy 02/19/2003 mdsida 03/03/2003	kgilfoy 03/07/2003					S&L Crime
/1			pgreensl 03/07/2003		sbasford 03/07/2003		

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Received: 01/03/2003

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For: Gary Sherman (608) 266-7690

By/Representing: Judy Kelly (aide)

This file may be shown to any legislator: NO

Drafter: dkennedy

May Contact:

Addl. Drafters:

Subject: Health - abortion

Extra Copies: kmg

Submit via email: YES

Requester's email: Rep.Sherman@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	dkennedy	1 - 3/7 kmg	3/7 P8	3/7 P8/R			

FE Sent For:

<END>

Bill Request Form

Legislative Reference Bureau
100 N. Hamilton Street
Legal Section 266-3561

You may use this form or talk directly with the LRB attorney who will draft the bill.

Date 1-2-03

Legislator, agency, or other person requesting this draft REP. GARY SHERMAN

Person submitting request (name and phone number) Joey Kelly - 6-7690

Persons to contact for questions about this draft (names and phone numbers) _____

Rep SHERMAN 266-7690

Describe the problem, including any helpful examples. How do you want to solve the problem?

DRAFT BILL TO OUTLAW HUMAN CLONING THAT DOES NOT INTERFERE WITH STEM CELL RESEARCH

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 2001 LRB-2345/1 or 1999AB-67).

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES ☒ NO

If yes:

Anyone who asks? YES NO

Any legislator? YES NO

Only the following persons _____

Do you consider this request urgent? YES ☒ NO If yes, please indicate why _____

Should we give this request priority over any pending request of this legislator, agency, or person?

YES ☒ NO

✓ **Dsida, Michael**

From: Sherman, Gary
Sent: Tuesday, February 25, 2003 5:29 PM
To: Dsida, Michael
Subject: RE: Penalties for cloning

Yes, I like that. Combine the two.
G

-----Original Message-----

From: Dsida, Michael
Sent: Tuesday, February 25, 2003 4:27 PM
To: Sherman, Gary
Subject: RE: Penalties for cloning

Under Rep. Kestell's bill, the minimum forfeiture is \$1 million. Although the maximum possible forfeitures under Sen. Meyer's bill were higher (except in cases in which the violator made more than \$5 million in the process), there was no minimum forfeiture. Do you still want to use Sen. Meyer's approach? Another option would be to combine the two approaches, so that you retain the higher maximums from Sen. Meyer's bill and retain the minimum from Rep. Kestell's.

-----Original Message-----

From: Sherman, Gary
Sent: Tuesday, February 25, 2003 2:25 PM
To: Dsida, Michael
Subject: RE: Penalties for cloning

I wonder if we should define cloning a little more broadly. Is removing a nucleus really the only way it can be done? The key part is the last part of the test, and that is good, but I am not sure about having as narrow an element as removing and implanting a nucleus. Isn't that just tying us to current technology?

On penalties, I like Meyer's higher fines, but I think we should also include Kestell's felony.

Hope this is helpful.

Gary

-----Original Message-----

From: Dsida, Michael
Sent: Tuesday, February 25, 2003 11:16 AM
To: Rep.Sherman
Subject: Penalties for cloning

I've attached Sen. Meyer's bill from last session, which I will use as a starting point. Note (on p. 3) that his bill entailed forfeitures, not criminal penalties. Rep. Kestell's bill also imposes substantial forfeitures -- \$1 million or twice the person's gain, whichever is greater. But in addition, it treats cloning as a felony, with a maximum sentence of 10 years and a maximum fine of the greater of: 1) twice the amount of the violator's gain; or 2) \$250,000 for an individual or \$500,000 for an entity.

Please let me know what penalty or penalties you would like to include in your bill. Also, feel free to call me if you have any other questions.

<< File: 01-3964/2 >>

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

Dsida, Michael

From: Sherman, Gary
Sent: Friday, February 28, 2003 10:43 AM
To: Dsida, Michael
Subject: RE: Fines and forfeitures in cloning bill

Give it a try and I will look at it.

The US House passed a bill banning cloning yesterday, so whatever competing versions there were, there is only one House version now.

Gary

-----Original Message-----

From: Dsida, Michael
Sent: Thursday, February 27, 2003 3:55 PM
To: Sherman, Gary
Subject: RE: Fines and forfeitures in cloning bill

There are several bills pending that prohibit cloning altogether, but I did not look at the penalties proposed in them. Instead, I looked at S. 303 (the "Cloning Ban and Stem Cell Research Protection Act of 2003"), which is being sponsored by Sens. Hatch, Feinstein, Specter, Kennedy, Harkin, and Miller. See <http://www.theorator.com/bills108/s303.html>. That bill provides for: 1) a maximum term of Imprisonment of 10 years; 2) a maximum fine (which I believe would be dependent on the Sentencing Commission's assessment of the severity of the offense); and 3) a civil penalty (the equivalent of a forfeiture under Wisconsin law) of \$1,000,000 or three times the gross pecuniary gain resulting from the violation, whichever is greater.

In view of your comment below, I will not use the minimum forfeiture language from Rep. Kestell's bill after all.

-----Original Message-----

From: Sherman, Gary
Sent: Thursday, February 27, 2003 12:14 PM
To: Dsida, Michael
Subject: RE: Fines and forfeitures in cloning bill

I don't believe in minimums, so I think we should be alright.

Do you know what the proposed federal law does and what the penalties are in that law?

Gary

-----Original Message-----

From: Dsida, Michael
Sent: Thursday, February 27, 2003 11:29 AM
To: Rep.Sherman
Subject: Fines and forfeitures in cloning bill

When I emailed you earlier this week, I had forgotten about a line of cases dealing with excessive forfeitures and fines. Those cases may affect what penalties you want in your bill.

03/03/2003

The Eighth Amendment states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Under *U.S. v. Bajakajian*, 524 U.S. 321, <http://supct.law.cornell.edu/supct/html/96-1487.ZO.html> (1998), an excessive fine is one which is "grossly disproportional to the gravity of the defendant's offense." (In *Bajakajian* the court considered the constitutionality of a forfeiture, but in so doing, the court established the standard to be applied to fines as well.) Instead of looking at the penalty in the abstract, a court conducting a disproportionality analysis will generally look at a defendant's culpability and the penalty imposed on a case-by-case basis. Thus, imposing a \$500,000 fine might be unconstitutional in certain contexts. (Note that under s. 939.50 (3), there is no fine whatsoever for homicide or other Class A or B felonies.) But because there is no mandatory minimum fine under the bill, the fine provisions are probably not unconstitutional on their face. See *Minnesota v. Rewitzer*, 617 N.W.2d 407, <http://www.lawlibrary.state.mn.us/archive/supct/0009/c499807.htm> (2000).

Requiring the defendant to forfeit any ill-gotten gains is also probably constitutional. Such a requirement would not be covered by *Bajakajian*, because it would not be construed as punitive. But a provision that mandates a \$5,000,000 or \$10,000,000 forfeiture or a forfeiture of twice the amount of the defendant's gain may be unconstitutional. "[W]hether a forfeiture would be far in excess of the maximum fine is a factor appropriately considered under the *Bajakajian* test." *State v. Boyd*, 2000 WI App. 208, <http://www.wisbar.org/wisctapp2/3q00/99-2633.htm>. Although that factor is not dispositive, see *Bajakajian*, 524 U.S. at 331, n.11, the infrequency with which the cloning offense will be committed and the size of the disparity between the maximum fine and the mandatory forfeiture in cases not involving substantial gain (\$250,000 vs. \$5,000,000 for a violation by an individual; \$500,000 vs. \$10,000,000 for a violation by an entity) make the forfeiture provisions constitutionally suspect. See *Boyd*, ¶17.

The constitutional questions notwithstanding, I can include any type of fine or forfeiture provision in the bill that you would like. But in view of the above, if you would like to use different provisions, or if you would like to discuss different options for the penalty, please let me know.

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

132.20(2)

(2) Any person who, with intent to deceive, traffics or attempts to traffic in this state in a counterfeit mark or in any goods or service bearing or provided under a counterfeit mark is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), if the person is an individual he or she may be fined not more than \$250,000 and if the person is not an individual the person may be fined not more than \$1,000,000.

196.378(5)

(5) (intro.) **Penalty.** Any person who violates sub. (2) or any wholesale supplier who provides an electric provider with a false or misleading certification regarding the sources or amounts of energy supplied to the electric provider shall forfeit not less than \$5,000 nor more than \$500,000. Forfeitures under this subsection shall be enforced by action on behalf of the state by the attorney general. A court imposing a forfeiture under this subsection shall consider all of the following in determining the amount of the forfeiture:

285.41(7)

(7) **Penalty.** Notwithstanding s. 285.87, any major utility that exceeds the annual emission rate under sub. (2) (a) in violation of this section shall forfeit not less than \$100,000 nor more than \$500,000 for each year of violation.

Dsida, Michael

Subject: Fines and forfeitures

I know that until February 1, there were controlled substance offenses in the Wisconsin statutes that permitted \$1 million fines. See, e.g., s. 961.41 (1) (d) 6. But those statutes were enacted before Bajakajian.

02/27/2003

KMG

2001 SENATE BILL 379

January 11, 2002 - Introduced by Senators M. MEYER, HANSEN, PLACHE, CHVALA and BURKE, cosponsored by Representatives PLOUFF, HINES, SYKORA, GUNDERSON, MILLER and RYBA. Referred to Committee on Health, Utilities, Veterans and Military Affairs.

- 1 AN ACT *Gen. Cat.* *nontherapeutic* to amend 50.35, 448.015 (4) and 448.02 (3) (a); and to create 20.9271
2 and 146.347 of the statutes; relating to: ~~human cloning and the sale~~
3 ~~or purchase of an ovum, embryo, or fetus for the purpose of cloning a human,~~
4 ~~prohibiting the use of state funds for cloning,~~ and providing penalties.

ANAL. INS A

Ⓟ + B

Analysis by the Legislative Reference Bureau

This bill prohibits any person from ~~cloning or attempting to clone a human being, or from selling or purchasing an ovum, embryo, or fetus for the purpose of cloning a human being.~~ Cloning a human being is defined in the bill as intentionally creating a genetic duplicate of an individual by transferring the nucleus from any cell of that individual into a human ovum, the nucleus of which has been removed, and intentionally using that human ovum to initiate a pregnancy that is intended to result in the birth of a human being.

Ⓟ In addition, Under the bill, any individual who clones or attempts to clone a human being or who sells or purchases an ovum, embryo, or fetus for the purpose of cloning a human being is subject to a forfeiture of not more than the greater of \$5,000,000 or double any monetary gain that the individual derived from the prohibited act. A violator who is a physician may be charged with unprofessional conduct. If the person violating the prohibition is not an individual (for example, a clinic or other institution), the ~~penalty is a forfeiture of not more than the greater of \$10,000,000 or double any monetary gain that the person derived from the prohibited act;~~ for a violator that is a hospital, the department of health and family services must suspend or revoke the hospital's certificate of approval. Lastly, under the bill, state

his or her violation

the violation.

maximum

is

SENATE BILL 379

funds may not be used for the purpose of cloning or attempting to clone a human being.

CRIME → For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.9271 of the statutes is created to read:

2 **20.9271 Subsidy of cloning prohibited.** (1) In this section, "clone a human
3 being" has the meaning given in s. 146.347 (1) (a).

4 (2) No funds of this state may be authorized for or paid for the purpose of
5 cloning a human being or attempting to clone a human being.

6 (3) Whoever violates sub. (2) may be fined not more than \$10,000,000.

7 **SECTION 2.** 50.35 of the statutes is amended to read:

8 **50.35 Application and approval.** Application for approval to maintain a
9 hospital shall be made to the department on forms provided by the department. On
10 receipt of an application, the department shall, except as provided in s. 50.498, issue
11 a certificate of approval if the applicant and hospital facilities meet the requirements
12 established by the department. Except as provided in s. 50.498, this approval shall
13 be in effect until, for just cause and in the manner herein prescribed, it is suspended
14 or revoked. The certificate of approval may be issued only for the premises and
15 persons or governmental unit named in the application and is not transferable or
16 assignable. The department shall withhold, suspend or revoke approval for a failure
17 to comply with s. 165.40 (6) (a) 1. or 2. or 146.347 (2), but, except as provided in s.
18 50.498, otherwise may not withhold, suspend, or revoke approval unless for a
19 substantial failure to comply with ss. 50.32 to 50.39 or the rules and standards
20 adopted by the department after giving a reasonable notice, a fair hearing and a

SENATE BILL 379

reasonable opportunity to comply. Failure by a hospital to comply with s. 50.36 (3m) shall be considered to be a substantial failure to comply under this section.

SECTION 3. 146.347 of the statutes is created to read:

146.347 Human cloning prohibited. (1) In this section:

(a) "Clone a human being" means intentionally ~~create~~ a genetic duplicate of an individual by transferring the nucleus from any cell of that individual into a human ovum from which the nucleus has been removed and intentionally using that human ovum to initiate a pregnancy that is intended to result in the birth of a human being.

(b) "Physician" has the meaning given in s. 448.01 (5) ^{engage in human cloning.}

(2) No person may ~~do any of the following~~.

(a) ~~Clone or attempt to clone a human being.~~

(b) Purchase or sell an ovum, embryo, fetus, or fetal body part for the purpose of cloning a human being.

(3) Violation of sub. (2) by a physician constitutes unprofessional conduct.

(4) (a) ^{Any individual who.} Except as provided in par. (b), ~~whoever~~ violates sub. (2) may be required

to forfeit not more than the greater of the following:

1. Five million dollars.

2. If the individual derived ^(S) pecuniary gain from the violation, an amount equal to twice the gross gain.

(b) ^{Any} ~~Whoever~~ is a person ^{other than} ~~that is not~~ an individual ^{who} ~~and~~ violates sub. (2) may be required to forfeit not more than the greater of the following:

1. Ten million dollars.

2. If the person derived ^(S) pecuniary gain from the violation, an amount equal to twice the gross gain.

SECTION 4. 448.015 (4) of the statutes is amended to read:

SENATE BILL 379**SECTION 4**

1 448.015 (4) "Unprofessional conduct" means those acts or attempted acts of
2 commission or omission defined as unprofessional conduct by the board under the
3 authority delegated to the board by s. 15.08 (5) (b) and any act by a physician in
4 violation of s. 146.347 (2) or ch. 450 or 961 or by a physician assistant in violation of
5 ch. 450 or 961.

6 **SECTION 5.** 448.02 (3) (a) of the statutes is amended to read:

7 448.02 (3) (a) The board shall investigate allegations of unprofessional conduct
8 and negligence in treatment by persons holding a license, certificate, or limited
9 permit granted by the board. An allegation that a physician has violated s. 146.347
10 (2), 253.10 (3), 448.30, or 450.13 (2) or has failed to mail or present a medical
11 certification required under s. 69.18 (2) within 21 days after the pronouncement of
12 death of the person who is the subject of the required certificate or that a physician
13 has failed at least 6 times within a 6-month period to mail or present a medical
14 certificate required under s. 69.18 (2) within 6 days after the pronouncement of death
15 of the person who is the subject of the required certificate is an allegation of
16 unprofessional conduct. Information contained in reports filed with the board under
17 s. 49.45 (2) (a) 12r., 50.36 (3) (b), 609.17, or 632.715, or under 42 CFR 1001.2005, shall
18 be investigated by the board. Information contained in a report filed with the board
19 under s. 655.045 (1), as created by 1985 Wisconsin Act 29, which is not a finding of
20 negligence or in a report filed with the board under s. 50.36 (3) (c) may, within the
21 discretion of the board, be used as the basis of an investigation of a person named in
22 the report. The board may require a person holding a license, certificate, or limited
23 permit to undergo and may consider the results of one or more physical, mental, or

SENATE BILL 379

1 professional competency examinations if the board believes that the results of any
2 such examinations may be useful to the board in conducting its investigation.

3

(END)

2003 ASSEMBLY BILL

INS B and
INS 3/14

- 1 AN ACT *to create* 146.347 of the statutes, relating to: human cloning and
2 parthenogenesis and providing penalties.

Analysis by the Legislative Reference Bureau

This bill prohibits human cloning and parthenogenesis; attempting to perform human cloning or parthenogenesis; transferring or acquiring a human embryo produced by human cloning or parthenogenesis; and transferring or acquiring any embryo, cell, tissue, or product derived from a human embryo produced by human cloning or parthenogenesis. The bill defines "human cloning" as introducing nuclear material from one or more human somatic cells (a human cell with a complete set of chromosomes) into an egg cell, the nuclear material of which has been removed or inactivated, so as to produce a living organism, including a human embryo, having genetic material that is virtually identical to the genetic material of an existing or previously existing human organism. The bill defines "human parthenogenesis" as the process of manipulating the genetic material of a human egg cell, without introducing into it the genetic material from any other cell, in a way that causes the egg cell to become a human embryo.

A person who violates one of the prohibitions relating to human cloning or parthenogenesis on or after February 1, 2003, may be imprisoned for not more than ten years and may be fined up to \$500,000 or, if the person derives a pecuniary gain from the violation, an amount equal to twice the gross amount of the person's pecuniary gain, whichever is greater, if the violation was committed by a corporation, partnership, association, government, government agency, or any other entity, \$250,000 or, if the person derives a pecuniary gain from the violation, an amount

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ASSEMBLY BILL

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equal to twice the gross amount of the person's pecuniary gain, whichever is greater, if the violation was committed by an individual. ~~A person who violates one of the prohibitions is also subject to a civil monetary penalty (a forfeiture) of \$1,000,000 if the person derives a pecuniary gain from the violation, unless the person's gross pecuniary gain exceeds \$500,000. In that case, the amount of the forfeiture must be between \$1,000,000 and twice the amount of the person's gross pecuniary gain.~~

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 146.347 of the statutes is created to read:

~~146.347 Human cloning and parthenogenesis. (1) In this section:~~

(a) "Asexual reproduction" means reproduction not initiated by the union of an oocyte and a sperm.

(b) "Enucleated oocyte" means a fertilized or unfertilized oocyte, the nuclear material of which has been removed or inactivated.

(c) "Human cloning" means asexual reproduction accomplished by introducing nuclear material from one or more human somatic cells into an enucleated oocyte so ^{undertaken} to produce a living organism having genetic material that is virtually identical to the genetic material of an existing or previously existing human organism.

(d) "Human embryo" means a human organism derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells. "Human embryo" includes a zygote but does not include a human organism at or beyond the stage of development at which the major body structures are present.

ASSEMBLY BILL

(e) "Human parthenogenesis" means the process of manipulating the genetic material of a human oocyte, without introducing into the oocyte the genetic material from any other cell, in a way that causes the oocyte to become a human embryo.

(f) "Living organism" includes a human embryo.

(g) "Somatic cell" means a cell that has a complete set of chromosomes and that is obtained or derived from a living or dead human organism at any stage of development.

(2) No person may knowingly do any of the following:

(a) Perform or attempt to perform human cloning or human parthenogenesis.

(b) Transfer or acquire for any purpose a human embryo produced by human cloning or human parthenogenesis or any embryo, cell, tissue, or product derived from a human embryo produced by human cloning or human parthenogenesis.

(3) (a) Any person who violates sub. (2) is guilty of a Class G felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (g), the person may be fined under par. (b).

(b) 1. The maximum fine for a person other than an individual who violates sub. (2) is \$500,000 or, if the person derives a pecuniary gain from the violation, an amount equal to twice the gross amount of the person's pecuniary gain, whichever is greater.

2. The maximum fine for an individual who violates sub. (2) is \$250,000 or, if the individual derives a pecuniary gain from the violation, an amount equal to twice the gross amount of the individual's pecuniary gain, whichever is greater.

(4) (a) Except as provided in par. (b), any person who violates sub. (2) and who derives a pecuniary gain from the violation shall be required to forfeit \$1,000,000.

move

Reverse the order of these subdivisions please

INS
3/14

ASSEMBLY BILL

SECTION 1

(b) Any person who violates sub. (2) and who derives a pecuniary gain of more than \$500,000 from the violation shall be required to forfeit not less than \$1,000,000 nor more than an amount equal to twice the gross amount of the person's pecuniary gain.

SECTION 2. ~~Effective date.~~

(1) This act takes effect on February 1, 2003, or on the day after publication, whichever is later.

(END)

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1293/1
MGD:.....

1 analysis INSERT A ✓

2 ^{NO} engaging in or attempting to engage in human cloning. "Human cloning" is
3 defined to mean any form of human reproduction that: 1) does not involve the union
4 of an egg cell and a sperm cell; and 2) is undertaken for the purpose of initiating a
5 pregnancy that is intended to result in the birth of a human being with genetic
6 material that is virtually identical to the genetic material of a human embryo or fetus
7 or another born individual (regardless of whether that individual is alive or dead).
8 Any person who violates this prohibition may be fined ^{or} sentenced to a term of
9 imprisonment (consisting of a term of confinement in state prison followed by a term
10 of extended supervision) of up to ten years ^{or} both. The maximum fine under the
11 bill is: 1)

12 INSERT 3/4 ✓

13 (a) "Asexual reproduction" means reproduction not initiated by the union of an
14 oocyte and a sperm.

15 (b) "Human cloning" means asexual reproduction undertaken for the purpose
16 of initiating a pregnancy that is intended to result in the birth of a human being
17 whose genetic material is virtually identical to the genetic material of an existing or
18 previously existing human organism.

19 (c) "Human organism" includes a human embryo.

Emery, Lynn

From: Sherman, Gary
Sent: Friday, March 07, 2003 2:23 PM
To: LRB.Legal
Subject: Draft review: LRB 03-1293/1 Topic: Prohibit human cloning but permit stem cell research

It has been requested by <Sherman, Gary> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-1293/1 Topic: Prohibit human cloning but permit stem cell research



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1293/1
MGD:kmg:pg

2003 BILL

- 1 AN ACT to create 146.347 of the statutes; relating to: nontherapeutic human
2 cloning and providing penalties.

Analysis by the Legislative Reference Bureau

This bill prohibits any person from engaging in or attempting to engage in human cloning. "Human cloning" is defined to mean any form of human reproduction that: 1) does not involve the union of an egg cell and a sperm cell; and 2) is undertaken for the purpose of initiating a pregnancy that is intended to result in the birth of a human being with genetic material that is virtually identical to the genetic material of a human embryo or fetus or another born individual (regardless of whether that individual is alive or dead). Any person who violates this prohibition may be fined or sentenced to a term of imprisonment (consisting of a term of confinement in state prison followed by a term of extended supervision) of up to ten years or both. The maximum fine under the bill is: 1) \$250,000 or, if the person derives a pecuniary gain from the violation, an amount equal to twice the gross amount of the person's pecuniary gain, whichever is greater, if the violation was committed by an individual; 2) \$500,000 or, if the person derives a pecuniary gain from the violation, an amount equal to twice the gross amount of the person's pecuniary gain, whichever is greater, if the violation was committed by a corporation, partnership, association, government, government agency, or any other entity.

In addition, any individual who clones or attempts to clone a human being is subject to a forfeiture of not more than the greater of \$5,000,000 or double any monetary gain that the individual derived from his or her violation. If the person violating the prohibition is not an individual, the maximum forfeiture is the greater

BILL

of \$10,000,000 or double any monetary gain that the person derived from the violation.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 146.347 of the statutes is created to read:

2 **146.347 Human cloning prohibited.** (1) In this section:

3 (a) "Asexual reproduction" means reproduction not initiated by the union of an
4 oocyte and a sperm.

5 (b) "Human cloning" means asexual reproduction undertaken for the purpose
6 of initiating a pregnancy that is intended to result in the birth of a human being
7 whose genetic material is virtually identical to the genetic material of an existing or
8 previously existing human organism.

9 (c) "Human organism" includes a human embryo.

10 (2) No person may engage in human cloning.

11 (3) (a) Any person who violates sub. (2) is guilty of a Class G felony, except that,
12 notwithstanding the maximum fine specified in s. 939.50 (3) (g), the person may be
13 fined under par. (b).

14 (b) 1. The maximum fine for an individual who violates sub. (2) is \$250,000 or,
15 if the individual derives pecuniary gain from the violation, an amount equal to twice
16 the gross gain, whichever is greater.

BILL

2. The maximum fine for a person other than an individual who violates sub. (2) is \$500,000 or, if the person derives pecuniary gain from the violation, an amount equal to twice the gross gain, whichever is greater.

(4) (a) Any individual who violates sub. (2) may be required to forfeit not more than the greater of the following:

1. Five million dollars.

2. If the individual derives pecuniary gain from the violation, an amount equal to twice the gross gain.

(b) Any person other than an individual who violates sub. (2) may be required to forfeit not more than the greater of the following:

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(END)



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2257/1

MGD...king

PRELIM

OR INTRODUCTION

LPS- ^{2257/1}
~~this draft may need to~~
~~be re-typed~~
Please proof it w/
the marked -up
version of -1293/1;

2007

LPS

1

AN ACT ..

① Please proof
the text of the
insert with the

1293/1 rough material
behind the 2257/1
request sheet. Thanks.

ence Bureau

The people of the State of Wisconsin
enact as follows:

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If you have
questions,
please see
me. KG

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3 (END)